In the High Court of Punjab & Haryana at Chandigarh

R. S. A. No. 3334 of 2005 (O&M)

Date of decision : 19.11.2008

Hoshiar Singh ..... Appellant

vs

Municipal Council, Sonipat .... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sanjay Mittal, Advocate, for the appellant.

Rajesh Bindal J.

The plaintiff is in second appeal before this court against concurrent finding of fact recorded by both the courts below whereby suit filed by him for declaration to the effect that he had become exclusive owner of the suit property by way of adverse possession which is in the hostile knowledge to the Municipal Council- Respondent, was dismissed.

Briefly, the facts are that the plaintiff filed a suit claiming that he was in possession of the shop in dispute since 1962 continuously and to the knowledge of the respondent. The possession of the appellant was hostile and open. As the respondent intended to demolish the said shop, the appellant filed a suit for permanent injunction which was decreed by the civil court vide judgment and decree dated 15.12.1995. As a result of unauthorised possession, the appellant claimed that he had become the owner of the suit property. Both the courts did not find merit in the claim made by the appellant.

At the very outset, learned counsel for the appellant was unable to dispute that in terms of judgment of this court in *Bhim Singh and others vs Zile Singh and others* 2006 (3) R. C. R. (Civil) 97, plea of adverse possession does not give a cause of action to file a suit for declaration claiming ownership thereof as the same can only be raised as defence in a suit for possession filed by other party. In the present case, the suit having been filed by the appellant/plaintiff claiming ownership on the basis of adverse possession itself was not maintainable.

As the issue in the present appeal is squarely covered by the judgment of this court in *Bhim Singh's* case (supra), no question of law much less a substantial question arise. Accordingly, the appeal is dismissed.

19.11.2008 **(Rajesh Bindal)**
vs. **Judge**